

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
May 10, 2011

In the Matter of KENYON, Minors.

No. 300744
Macomb Circuit Court
Family Division
LC No. 2008-000330-NA

Before: WILDER, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the children under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication not rectified), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood that child will be harmed if returned home). We affirm.

I. FACTS

The older of the two children, J.K. (born January 3, 2008), was placed in the trial court's temporary custody in June 2008 after respondent pleaded no contest to allegations that she lacked housing, income, and employment; her behavior was extremely violent and erratic; and she smoked marijuana. Petitioner provided a parent-agency treatment plan requiring respondent to participate in mental health services and follow all the recommendations of the therapist, including taking any prescribed medication; submit random drug screens; complete an anger management program and parenting classes; maintain a legal and appropriate source of income and a suitable home; and maintain regular visits with the child and regular contact with petitioner.

Initially, respondent complied with her agreement, and petitioner was pleased with her progress. Respondent gave birth to her second child, S.K., in March 2009, and, finding that there was no risk to the child, protective services did not remove S.K. from respondent's care. In June 2009, the trial court placed J.K. back in respondent's care after respondent showed that she had suitable housing and was addressing her mental health issues.

Shortly thereafter, however, respondent lost her housing, moved into unsuitable housing, and then moved with the children to her parents' home. In November 2009, respondent experienced a mental health crisis. She placed her children with other adults because "she needed a break," was not available to care for them, and was involuntarily committed by her family. She spent five days in the hospital. J.K. was subsequently removed from respondent's

care, and S.K. was placed in the trial court's custody. The children were placed in separate relative placements.

Respondent was provided with a parent-agency treatment plan in S.K.'s case that was substantially similar to the earlier plan. Petitioner was particularly concerned that respondent address her mental health and housing issues. Because of respondent's lack of progress, petitioner filed a supplemental petition seeking to terminate her parental rights. However, the trial court adjourned the termination hearing for 90 days to give respondent additional time to address the outstanding issues.

At the termination hearing, the caseworker testified that respondent failed to address her mental health and housing issues. After respondent's release from the hospital in November 2009, she was referred to outpatient mental health services, but she did not avail herself of these services. Her participation in therapy became inconsistent. In fact, in September 2010, petitioner received notice from the clinic that respondent's case had been closed because she had missed three consecutive appointments. Respondent also failed to obtain and maintain suitable housing. She spent most of the period between November 2009 and July 2010 at her parents' home even though she had previously advised petitioner that this home was not appropriate because there was a lot of discord between respondent and her mother. Although respondent had presented the caseworker at the July 2010 hearing with a lease to a trailer she intended to share with a friend, respondent admitted at the October 2010 termination hearing that she was still living with her parents. Respondent had indicated in the past that the living situation with her parents was not good and there was considerable arguing in the home. The caseworker testified that the children had been placed in separate relative placements and that the placements were appropriate.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

This Court uses the clearly erroneous standard in reviewing the trial court's findings on appeal from an order terminating parental rights. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). In applying the clearly erroneous standard, this Court recognizes the special opportunity the trial court has to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

B. ANALYSIS

Respondent's parental rights were terminated under MCL 712A.19b(3)(c)(i), (g), and (j), which provide for termination of parental rights where clear and convincing evidence establishes the following:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Only a single statutory ground needs to be proven in order to terminate parental rights. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

Respondent first argues that termination was not appropriate under § 19b(3)(c)(i) where respondent made substantial progress on each of the goals in the parent-agency agreement. We disagree.

Under § 19b(3)(c)(i), the determination of what constitutes a reasonable time requires consideration not only of how long respondent would need to improve her parenting skills but also how long the children could wait for this improvement. *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991). The foregoing evidence shows that the two critical concerns that brought J.K. and S.K into the trial court's care – respondent's mental health and housing issues – were not rectified. Respondent failed to address these issues in the more than two years J.K. was in the trial court's custody, even after the trial court delayed the termination hearing for 90 days to give respondent additional time to show that she could progress on these issues. Therefore, the trial court did not clearly err in terminating respondent's parental rights under § 19b(3)(c)(i).

Respondent next argues that termination was not appropriate under § 19b(3)(g) because respondent had housing, either on her own or with her parents, and was willing to commit to mental health treatment if there was a realistic opportunity that the children could be returned to her care. We disagree.

A respondent's failure to substantially comply with her parent-agency agreement would support termination of respondent's parental rights under § 19b(3)(g). See *In re AH*, 245 Mich App 77, 87-88; 627 NW2d 33. As provided above, the evidence shows that respondent failed to provide proper care or custody for the children. Although respondent had improved her situation and was addressing the concerns raised by petitioner, she was unable to maintain this progress over the year and a-half the children were in the trial court's care, at one point leaving the children with others because she "needed a break." As such, the trial court could conclude that there was no reasonable expectation that she would be able to provide proper care and custody for the children within a reasonable time considering the children's ages. Thus, the trial court did not clearly err when it terminated respondent's parental rights under § 19b(3)(g).

Finally, respondent argues that termination was not appropriate under § 19b(3)(j) because respondent regularly visited the children, her behavior was appropriate, she did not use drugs, she left the children in the care of responsible adults when she realized that she needed to get mental health treatment, and she demonstrated that she could properly parent the child when they were in her care from June 2009 to November 2009. We disagree.

Under the Michigan Court Rules, failure to substantially comply with a court-ordered case service plan “is evidence that return of the child to the parent may cause a substantial risk of harm to the child’s life, physical health, or mental well-being.” MCR 3.976(E)(2). “Although the amount of neglect necessary to justify termination of parental rights is not capable of precise or exact definition, termination of parental rights due to neglect must be based upon testimony of such a nature as to establish or seriously threaten neglect of the child for the long-run future.” *In re Youmans*, 156 Mich App 679, 689; 401 NW2d 905 (1986). “There must be real evidence of long-term neglect or serious threats to the future welfare of the child to overthrow permanently the natural and legal rights of the parent.” *Id.*

As discussed, respondent did not have suitable housing and was not pursuing treatment for her mental health issues. Thus, the evidence established that there was a reasonable likelihood, based on respondent’s conduct, that the children would be harmed if returned to respondent’s home, and therefore, the trial court did not clearly err in terminating respondent’s parental rights under § 19b(3)(j).

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

The trial court’s finding regarding whether termination is in the child’s best interests is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

B. ANALYSIS

Respondent argues that the evidence showed that there was a “great bond” between respondent and J.K. and the trial court failed to make any findings showing that termination of respondent’s parental rights was in the children’s best interests. Rather, the trial court focused on the children’s placement with family members and the children’s need for safety, stability, and permanence. According to respondent, the trial court either applied a new, inappropriate standard, contrary to the statutory requirements, or, alternatively, clearly erred in finding that termination was in the children’s best interests. We disagree.

MCL 712A.19b(5) provides as follows:

If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.

In determining whether the child’s best interests require termination of parental rights, a trial court may consider evidence within the whole record. *Trejo*, 462 Mich at 356. The primary beneficiary of this analysis is the child. *Id.*

Contrary to respondent's assertion on appeal, in assessing the children's best interests, the trial court may consider the benefits of the children's placement outside respondent's care. *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009). Thus, the trial court properly considered J.K.'s and S.K.'s progress in their respective placements in assessing their best interests. Furthermore, while there was a bond between respondent and J.K, and respondent was capable of properly caring for both children under certain circumstances, she did not know how to manage high conflict situations. This became apparent when she left the children because she "needed a break" and was not available for them. Further, as noted, she failed to follow through with recommended mental health services and obtain suitable housing. Under these circumstances, the trial court did not clearly err in finding that termination was in the children's best interests.

Affirmed.

/s/ Kurtis T. Wilder
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood